

Application No. 09/862,905
Response to 14 November 2007 Final Office Action

REMARKS

Claims 16-17, 21-34, 49, 51-52, 54, 56, and 58-60 are pending. The specification is not amended and no claims are added, canceled, or amended by this response to the Office Action.

For reasons stated below, the undersigned submits that this application is in condition for allowance.

Declaration

The Office Action asserts that the 13 March 2007 is defective in failing to appropriately state that applicant believes the original patent to be either wholly or partly inoperative or invalid ... by reason of the patentee claiming either more or less than the patentee had the right to claim in the patent. The accompanying Supplemental Declarations now states that the signing inventors believe the patent to be partially or wholly inoperative because Applicants claimed less than Applicants had a right to claim in the patent. Accordingly, this asserted defect is now cured.

The Office Action specifically asserted that the reissue declaration of 13 March 2007 is defective because it fails to appropriately identify at least one error relied upon to support the reissue application, specifically the 13 March 2007 declaration fails to state an error within the original patent in stating "e.g., a claim in non-Jepson format reciting, in part, a recessed area in a top panel of a roof ventilator, the recessed area being non-linear in cross section, which is broader in scope than, e.g., claim 9, which recites a recessed area having a pair of side walls traversing a generally oval-shaped path."

The accompanying declaration now recites that "none of the other independent claims in the patent has such a broader limitation" *viz*, a non-linear path rather than a generally oval-

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shaped path. Therefore, the “at least one error” relied upon is specifically stated in the Supplemental Declaration.

The Office Action also states that the 13 March 2007 Supplemental Declaration is defective because it fails to identify all amendments by which the claims of the patent have been changes. The accompanying Supplemental Declaration now recites the amendments changing the claims as well as the required Substitute Amendment of 9 March 2007 restating each claim amendment. Accordingly, all amendments changing the claims are not recited in the accompanying Supplemental Declaration.

The Office Action further states that the 13 March 2007 Supplemental Declaration is defective because it fails to state that the “person making the oath or declaration acknowledges the to disclose to the Office *all* information known to the person to be material to patentability as defined in 37 C.F.R. § 1.56.” Emphasis in original. The foregoing statement is present in the accompanying Supplemental Oath, Hence, the accompanying Supplemental Declaration acknowledges the duty of candor and disclosure under 37 C.F.R. § 1.56.

35 U.S.C. § 251

The pending claims are rejected under 35 U.S.C. § 251 as based on a defective reissue declaration as set forth above. For reasons stated above, Applicants believe that the accompanying Supplemental Declaration complies with each rejection. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Non-Signing Inventor

As shown in the accompanying declaration by the undersigned and petition, Mr. Gary P. Kasner, one of the inventors, has refused to execute the accompanying Supplemental Declaration

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despite the fact that all reasonable efforts were expended to secure his signature. Accordingly, Applicants respectfully request that the requirement that Mr. execute the Supplemental Declaration be waived in the interest of justice.

Conclusion

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested. The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,


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